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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,408	01/05/2001	Robert I. Nurse	7903M	5236

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/755,408

Applicant(s)

NURSE, ROBERT I.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,8-14,16,17 and 21-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8-14,16,17 and 21-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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Claims 2, 6, 7, 15 and 18-20 have been canceled. Claims 1, 3-5, 8-14, 16, 17 and 21-34 are pending.

Applicant has defined the term "strut" to be broader than the word "panel" by stating that the strut 42 may be disposed in the form of a panel (see specification page 6, lines 15-23 and drawing Fig. 2-5). As noted by applicant, the applicant is allowed to be his own lexicographer. For this application, the term "strut" is understood to include a panel. Therefore, any reinforcing panel shown by a reference will read on a strut as claimed by applicant.

It is noted with appreciation that the substitute specification and the proposed substitute sheets of drawing (both filed on March 23, 2003 and June 30, 2003) have been withdrawn. The respective objections to these items have been withdrawn.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3-5, 8-14, 16, 17 and 21-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 states that at least one upstanding strut is articulably connected to the sidewall. No direct connection of the strut to the sidewall appears in the drawings or is identified in the written specification and is not adequately disclosed. The strut is connected to a floor support. It is believed that the strut is directly and articulably connected to the floor support which is connected to the floor pan and the floor pan is connected to the sidewall. The articulable

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connection of the strut to the sidewall is an indirect connection. A connection between the floor support and the floor pan is not identified. Claim 10 contains similar language pertaining to first and second struts articulably associated with a pair of opposed sidewalls. Claim 10 is similarly rejected.

Claim 21 states that at least one upstanding reinforcing panel is removable, while claim 22 states that the reinforcing panel is articulably joined to the sidewall. No direct connection of the strut to the sidewall is adequately disclosed. It appears that this connection is indirect. Claim 28 refers to the removable nature of the reinforcing panels and the articulably associated relationship of the reinforcing panels with the sidewalls. Claim 28 is similarly rejected.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 4, 10-14, 16, 17, 21-23 and 28-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Quirion.

**First Interpretation: Reads on claims 1, 3, 4, 10-14, 16, 17, 21-23 and 28-34**

Quirion discloses a container having a plurality of upstandable sidewalls 64, 66 interconnected by a floor pan 64' and at least one upstandable strut (either end member 50 or 52

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of shallow base 24) articulably connected to the sidewall (see Fig. 1-4, column 6, lines 11-19 and column 11, lines 15-22), the strut being removable from the sidewall without separation from the container. Floor pan support is bottom surface 48 of shallow base 24.

**Second interpretation: Reads on claims 1, 3, 4, 10-14, 16, 21-23, 28-33**

Quirion discloses a container having a plurality of upstandable sidewalls 50, 52 interconnected by a floor pan 48 and at least one upstandable strut (64 or 66) articulably connected to the sidewall (see Fig. 1-4, column 6, lines 11-19 and column 11, lines 15-22), the strut being removable from the sidewall without separation from the container. Floor pan support is liner portion 64'.

Claims 1, 3, 4, 10-14, 16, 17, 21-23 and 28-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Bolton, Sr. (Bolton).

Bolton discloses a similarly constructed container as described by Quirion above.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 8, 9 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quirion and Bolton in view of Harrison.

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Quirion and Bolton disclose the invention except for the tab/slot arrangement. Harrison teaches the tab/slot arrangement with tabs on the sidewall and slots on the reinforceable panel/strut. It would have been obvious to modify the reinforceable panel/strut to have slots to accept tabs placed on the sidewall of the inner tray to secure the sidewall and reinforceable panel strut. A securement would be motivated by a need to minimize movement of the sidewall with respect to the reinforceable panel/strut to prevent wear and by a need to align the reinforceable panel/strut to properly reinforce the sidewall. The notches claimed read on the slots which can be gripped. It would have been obvious to add additional slots in order to improve grip and handling of the reinforceable panels/struts.

If the reinforcing panels of Quirion and Bolton are not deemed to be coextensive. Harrison teaches coextensive reinforcing panels. It would have been obvious to enlarge the reinforcing panel to be coextensive to provide greater strength and to provide full coverage reinforcement to the sidewall.

Claims 14 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quirion and Bolton.

If it should be deemed that the cardboard of Quirion and Bolton is not fluted cardboard. Then, Official notice is taken that fluted cardboard is well known. It would have been obvious to substitute fluted cardboard for non-fluted cardboard in order to improve buckling strength of the cardboard.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc